

Application No. 09/641,600  
Amendment "II" dated December 27, 2005  
Reply to Office Action mailed July 26, 2005

### REMARKS

#### A. Background

Claims 1-65 and 78-84 were pending, with claims 66-77 being previously withdrawn. The Office Action rejected claims 1-65 and 78-84 under 35 U.S.C. §102 as being anticipated by cited art. By this response, Applicants amended claims 1, 20, 24, 29 and 33, cancelled claims 66-77, and added new claims 85-96. Accordingly, claims 1-65 and 78-96 are presented for the Examiner's reconsideration in light of the amendments and the following remarks.

#### B. Proposed Claim Amendments

Applicants amended claims 1, 20, 24, 29, 33, 49 and 78, with amendments to claims 20, 24 and 33 correcting minor grammatical and typographical errors. Applicants respectfully submit that the amendments and the new claims do not introduce new matter, and entry thereof is respectfully requested.

#### C. Rejections Under 35 U.S.C. §102(e)

Claims 1-65 and 78-84 were rejected under 35 U.S.C. §102(e) as being anticipated by United States Patent No. 6,749,537, issued to Hickman (hereinafter "the Hickman patent"). Applicants respectfully traverse.

The Hickman patent discloses an exercise apparatus for remote interactive exercise and health equipment, and which can provide feedback and encouragement to the user as a "virtual personal trainer." (Col. 2, ll. 13-15). In particular, the Hickman patent discloses a local system that includes "one or more health or fitness devices" and a computer. (Col. 4, ll. 15-23). The local computer in the local system "controls and monitors the operation and use [] of the exercise

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apparatus." (Abstract). To monitor and control the exercise apparatus, the local computer uses exercise programs which are run according to "scripts" stored in the memory of computer 24. (Abstract). A script is "simply a sequence of exercise or other health-related events that are performed in fixed or variable sequences." (Col. 8, ll. 39-42). Based on these scripts, the local "computer 24 can, under software and hardware control," control a resistance level in the exercise device. (Col. 5, ll. 13-15; *see also* Col. 4, ll. 57-60). More particularly, exercise parameters such as "RPM, resistance, machine state, etc." are stored "in mass storage 88" of local computer 24 and these "exercise parameters are used to control implementation of the exercise script." (Col. 9, ll. 29-36). Stated another way, the local computer accessed the script and locally stored parameters which the local computer then uses to control the exercise device.

In addition, the local system communicates with a remote system that includes "a remote system computer 66 which is coupled to the telephone line 30 by a modem 68" or "via a wide area network (WAN) such as the Internet." (Col. 6, ll. 11-16, 34-37). A remote system computer can "upload information from the exercise and health equipment of a local system to be analyzed by the personal trainer at the remote computer." (Col. 2, ll. 35-40). The results of the analysis can be used to "provide additional instruction, encouragement, and cautions, and the remote system computer can download new exercise scripts or programs to the local system computer to implement" the added instructions, encouragements, and cautions. (Col. 2, ll. 40-44).

Initially, it will be noted that the Hickman patent, which is the only reference relied upon by the Examiner, was filed on October 16, 2000, which is after the filing date of the present application, i.e. August 18, 2000. The Hickman patent is a continuation-in-part of United States Patent No. 6,193,631 ("the '631 patent"), which was filed on March 22, 1999, prior to the filing

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date of the present application. Accordingly, to the extent the Hickman patent is prior art under 35 U.S.C. § 102(e), to which Applicants do not necessarily acquiesce, it will be appreciated that any portion of the Hickman patent which does not have corresponding supporting disclosure in the '631 patent in accordance with the requirements of 35 U.S.C. § 112, first paragraph, cannot be considered prior art to the present application. M.P.E.P. § 706.02(f)(1).

In this regard, various elements of the pending claims are rejected under 35 U.S.C. § 102(e) which, if disclosed at all by the Hickman patent, to which Applicants do not acquiesce, are unsupported by the '631 patent. As merely one example, the '631 patent fails to teach, suggest, or disclose, particularly in a manner satisfying the requirements of 35 U.S.C. § 112, first paragraph, any microphone, video camera, or other type of audio or video input device associated with a user device. Accordingly, the Hickman patent is not prior art with respect to any claim of the present invention directed to an audio or video input device (i.e. claims 8, 10, 30 and 90).

Notwithstanding the above, the Hickman patent also fails to anticipate the present invention inasmuch as it fails to teach or suggest each and every limitation of the pending claims. Specifically, and in contrast to the Hickman patent, independent claim 49 recites a "communication mechanism in communication with the user interface device...adapted to receive a packetized second signal *including synchronized control signals* from the *remote* communication system," and independent claim 78 recites "control means, communicating with the exercise mechanism, for receiving one or more packetized control signals from the *remote* communication system." The Hickman patent neither teaches nor suggests a packetized second signal received *from remote the communication system* which includes *packetized control signals*, as claimed. In particular, the Hickman patent teaches that the local computer controls

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the exercise device. In particular, the local computer can be connected to a remote network "via a wide area network (WAN) such as the Internet." (Col. 6, ll. 11-16). From the remote computer, the local computer may "download new exercise scripts or programs to the local system computer to implement...changes" in instructions, encouragement, and cautions. (Col. 2, ll. 40-44). Accordingly, while the Hickman patent thus discloses that scripts and programs are sent from the remote system, the Hickman patent further teaches that it is the local computer that controls the exercise device. The Hickman patent is devoid of any teaching or suggestion that control signals received from the remote source, as claimed. This is particularly so considering the teaching of the Hickman patent that control of the exercise device is effected by a local computer, based on the use of parameters stored on the local computer.<sup>1</sup> Similarly, the Hickman patent fails to disclose that control signals are synchronized.

Similarly, independent claim 29 recites a "communicating mechanism...receiving a packetized second signal from a *remote source*...the packetized second signal including one or more packetized control signals," and claim 1 recites a similar limitation in functional, *i.e.* means for, language. Again, the Hickman patent neither teaches nor suggests that a packetized control signal is received from a remote source, as claimed, or even that any control signal is packetized (*i.e.* the signal from the local computer to the exercise device).

<sup>1</sup> Additionally, the Inventor of the Hickman patent specifically distinguished its modifiable scripts from a command signal for controlling exercise equipment. In particular, in response to a rejection under 35 U.S.C. § 102(b) relying on Begun et al. (U.S. Patent No. 5,474,090), which teaches using DTMF command signals transmitted over phone lines to control the operation of an exercise device (Begun, Col. 7, ll. 19-34), the Inventor commented:

Begun does not teach or suggest the use of a modifiable script which is used to control the operation of an exercise apparatus, and wherein the operation may include a force-feedback to a user of the exercise apparatus. Instead, Begun uses DTMF signals transmitted from the base station to initiate the therapy and/or control the work load of the exercise device.

(See Prosecution History of the Hickman patent, Paper No. 7 (Amendment dated June 18, 2002), p. 4, emphasis in original).

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Similarly, new independent claim 85 recites "a communication link for communicating packetized data between the local computer and the remote system, such that the local system may receive remote system data from the remote system, including control signals for controlling operation of the exercise apparatus." The Hickman patent neither teaches nor suggests communicating "packetized data...including packetized control signals for controlling operation of the exercise apparatus."

Accordingly, Applicants respectively submit that pending independent claims 1, 29, 49 and 78, and new independent claim 85, as amended and presented herein, are neither disclosed in the Hickman patent nor obvious variations of the apparatus disclosed therein. By definition, dependent claims 2-28, 30-48, 50-65, 79-84 and 86-96 include the limitations of independent claims 1, 29, 49, 78 and 85, respectively, and are allowable over the Hickman patent for at least the same reasons. Accordingly, it is respectfully submitted that dependent claims 2-28, 30-48, 50-65, 79-84 and 86-96 as amended and presented herein, are neither disclosed in the Hickman patent, nor obvious variations of the apparatus disclosed therein. Consequently, claims 1-65 and 78-88 as amended and presented herein, overcome the rejections based on 35 U.S.C. § 102(e).

Applicants thus respectfully submit that each independent and dependent claim is allowable for at least these reasons, nevertheless, for the record, Applicants also respectfully note that the Hickman patent fails to teach numerous other elements recited by various independent and dependent claims, and that such independent and dependent claims are allowable over the Hickman patent for additional reasons. For example, Hickman fails to disclose an exercise device enabled to transmit *user control signals* (claims 49-65).

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D. Summary and Conclusion

In view of the foregoing, Applicants respectfully request favorable reconsideration and allowance of the present claims. In the event that the Examiner finds any remaining impediment to the prompt issuance of the pending claims, which could be remedied through a telephonic conversation, or which is susceptible to being overcome by means of an Examiner's Amendment, the Examiner is respectfully invited to initiate the same with the undersigned attorney.

Dated this 27<sup>th</sup> day of December, 2005.

Respectfully submitted,



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